

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
*Criminal Rev. Application No.S-56 of 2020*

Date of hearing: 03.06.2021  
Date of decision: 03.06.2021

Applicant: Nemo.

Respondents/Proposed

Accused: Kaleemullah and others through  
Mr. Saeed Ahmed Panhwar, Advocate

The State: Through Mr. Shafi Muhammad Mahar,  
Deputy Prosecutor General

**ORDER**

**KHADIM HUSSAIN TUNIO, J,-** Applicant through captioned criminal revision application has impugned the order dated 22.09.2020, passed by learned Additional Sessions Judge (Hudood) Sukkur in Direct Complaint No. 31/2020 (*Re- Imam Bux v. SHO PS Dubbar and others*) whereby the learned Judge has dismissed the complaint filed by the applicant u/s 3 & 4 of Illegal Dispossession Act 2005.

2. Precisely the facts of the instant criminal revision application are that the complainant/applicant is the lawful owner of agricultural land bearing S.No.388 measuring 4-32 acres situated in deh Panhwar. On 05.05.2020 at about 1700 hours applicant/complainant along with Hamzo and Asghar was available at the disputed land for abyari where one Beco machine was running. All of sudden respondents/accused along with three unidentified persons with opened faces emerged and on the instigation of Kaleemulah caused fists and kicks blows and broken the Beco machine; that the respondents/accused illegally dispossessed the applicant/complainant from the disputed land and issued threats of dire consequences. On the next day complainant appeared at Police Station and disclosed the facts but the SHO on the influence of the political persons directed the applicant/complainant to settle the dispute with the

respondents/accused. The applicant along with witnesses time and again approached the accused for return and handing over the possession of the subject property to him but they refused, hence he filed direct complaint under Illegal Dispossession Act, which was dismissed by learned Additional Sessions Judge (H) Sukkur through impugned order by observing that the complaint of the complainant does not come within the ambit of Illegal Dispossession Act 2005.

3. None has appeared for applicant to address the court. The grounds agitated in the memo of present criminal revision application are treated as arguments of the applicant.

4. Learned counsel for the respondents/proposed accused has supported the impugned order while arguing that the civil litigation is pending before the civil court in respect of disputed land; that the applicant has sold out the disputed property to the respondents/accused in the sum of Rs.50,00,000/- out of which 1500,000/- has been paid to the applicant/complainant by the respondents/accused; that the remaining sale consideration amount was agreed to pay to him at the time of mutation but applicant secretly got mutated the khata of the disputed land in favour of SEPCO authorities and received two crores and one lac from the SEPCO authorities, therefore suit for Declaration, Permanent Injunction and Specific Performance of contract filed by the respondents/accused against the applicant; that the impugned order is legal one which cannot be called in question through instant revision application, therefore he prays for dismissal of revision application. In support of his contention he has referred the case law reported as *Bashir Ahmed v. Additional Sessions Judge Faisalabad and 4 others* (PLD 2010 SC 661) and *Shakeel Ahmed Khan v. The State and another* (2014 MLD 370).

5. However learned DPG for the State did not support the impugned order.

6. Heard learned counsel for the respondents/accused, learned DPG and perused the record as well as perused the case law referred by the counsel for the respondents/accused. From perusal of record it reveals that learned trial Court, in its order has observed that police report did not mention any case/record of property grabbing by respondents/accused and no antecedents of Qabza mafia is also presented by police against proposed accused. It is by now a well settled principle of law that a criminal complaint is maintainable if the point of *Qabza Mafia* or *habitual land grabbers* isn't established as it is not necessary that the complainant, who files the complaint, to firstly prove that the accused belong to a *Qabza Mafia*. In this respect, I am fortified by the dictum laid down by the Honourable Supreme Court in the case of *Mst. Gulshan Bibi & Others V. Muhammad Sadiq & Others (PLD 2016 Supreme Court 769)* wherein it has been observed as follows:-

“Section 3(1) of the said Act by using the terms 'anyone' and 'whoever' for the offenders clearly warns all persons from committing the offence described therein and when found guilty by the court are to be punished without attaching any condition whatsoever as to the maintainability of the complaint. So all that the Court has to see is whether the accused nominated in the complaint has entered into or upon the property in dispute in order to dispossess, grab, control, or occupy it without any lawful authority. Nothing else is required to be established by the complainant as no precondition has been attached under any provision of the said Act which conveys the command of the legislature that only such accused would be prosecuted who holds the credentials and antecedents of 'land grabbers' or 'Qabza Group'.”

(emphasis supplied)

7. Furthermore from the perusal of record it also reveals that FC Suit No.40/2020 filed by the respondents/accused No.1 is pending adjudication before the learned 2<sup>nd</sup> Senior Civil Judge Sukkur regarding same property which is under discussion in present complaint. In this regard I am of the view that the presence of a civil litigation does not, in

any way, bar the proceedings under criminal law and the same can run concurrently for the same. In this respect, reliance is placed on the case law reported as *Shaikh Muhammad Naseem v. Mst. Farida Gul (2016 SCMR 1931)*, wherein it has been held that:-

'5. In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immovable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmed's case (PLD 2007 Lahore 231, reasoning of which was adopted by three member bench of this Court in Bashir Ahmed's case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the *Illegal Dispossession Act, 2005*, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law.'

*(emphasis supplied)*

8. In light of the above discussion and circumstances, I am of the considered opinion that the learned trial Court has erroneously come to the conclusion that no offence under Illegal Dispossession Act was made out. Resultantly, revision application was allowed, the impugned order was set-aside and the matter was remanded back to the trial Court for

deciding afresh fully in accordance with law on merits after providing opportunity of adducing evidence to the parties. Vide shot order dated 03.06.2021, these are the reasons for the short order even date.

**J U D G E**

Suleman Khan/PA